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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,873	06/14/2006	Masaki Iwasaki	292122US0PCT	6546

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EXAMINER	
THAKUR, VIREN A	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
07/17/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/582,873	IWASAKI ET AL.	
	Examiner	Art Unit	
	VIREN THAKUR	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, for the reasons given in the previous Office Action, mailed November 6, 2007.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1, 3-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohishi et al. (US 20030077374 A1) in view of Kuznicki et al. (US 5681569), Ekanayake et al. (US H001628 H) and Broz (US 20020197376), for the reasons given in the previous Office Action, mailed November 6, 2007.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohishi et al. (US 20030077374 A1) in view of Kuznicki et al. (US 5681569), Ekanayake et al. (US H001628 H) and Broz (US 20020197376), as applied to claims 1, 3-6 and 8 above, and in further view of Tsai et al. (US 4946701) and Teach Me Tea Cha, for the reasons given in the previous Office Action, mailed November 6, 2007.

Terminal Disclaimer

7. The terminal disclaimer filed on March 5, 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application Number 10/583,558, 11/258,892 and 10/583,556 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

8. On page 2 of the response, Applicants assert that none of the cited references disclose or suggest a packaged beverage containing 0.0001 to 0.5 wt% of sodium ions and 0.001 to 0.2 wt% of potassium ions nor long term drinkability or an improved storage stability resulting there from.

This argument is not persuasive. On paragraph 0043 of Ohishi et al., it is noted that Ohishi et al. teach that inorganic salts, such as sodium polyphosphate, or sodium metaphosphate or sodium diphosphate. It would have been expected that each of these salts, when dissolved in an aqueous solution would have dissociated and thus resulted in the release of the sodium ion from the polyphosphate, metaphosphate or diphosphate ion, thus resulting in the claimed amount of the sodium ions. Ohishi et al. teach that the amount of the salt can be from 0.01 to 0.5% which is within the claimed range of 0.001 to 0.5%. Even further, it is noted that on pages 12 and 13 (paragraphs 0021 to 0023) that even applicant measures the amount of the sodium ions, based on the amount of sodium chloride, for instance, that would have been incorporated into the beverage. Applicant further states that the amount of the sodium ions can be included based on the addition of a salt, such as sodium chloride. Therefore, it is noted that Ohishi et al. thus teach the claimed range of sodium ions. Even further, however, it is noted that Kuznicki et al. provide further evidence of the conventionality of the addition of sodium and potassium ions, within the claimed range, for the purpose of providing

electrolytes which improve cellular hydration, to the beverage (See Column 5, lines 11-47).

Applicant further cites tables 1 and 2 from applicant's specification as further evidence of the long term drinkability and storage stability. This evidence is not persuasive. For instance, example 1 uses the same amount of sodium and potassium ions as comparative example 1, however the long term drinkability and storage stability of example 1 is apparently improved over comparative example 1. Therefore, applicant's arguments regarding the unexpected result of improved long term drinkability and storage stability as a result of the sodium and potassium ions are not persuasive. As previously stated, applicants' specification indicates that the purpose of using sodium and potassium ions, which are added as a result of adding a salt, is for the purpose of improving the taste of the product, based on controlling the bitterness and astringency (See pages 3-4, paragraph 0006 of applicants' specification). Even further, the specification further teaches on pages 11012 paragraphs 0020 to 0023 that the sodium and potassium ions exist in fruit extract and tea extract. As such, Ohishi et al. teach a tea extract and further teach fruit extract beverages (paragraph 0039) and using tea extract in the beverage. Regarding the improved drinkability and storage stability, it is noted that Ekanayake et al. on column 5, lines 34-45 teaches the use of salts for buffering the beverage. Broz on paragraph 0017, teaches the use of buffering salts to achieve balanced flavor and mouth-feel. Therefore the prior art provides evidence of the conventionality of using buffering salts, and thus the ions in solution for the purpose of improving the drinkability of the beverage. The particular amounts of the

salts and thus the ions would therefore have been an obvious result effective variable routinely determinable by experimentation for achieving the desired drinkability. This further would have been obvious since Ohishi et al. recognized the bitterness and astringency associated with beverages comprising catechins (paragraph 0008) and since the prior art references to Ekanayake and Broz recognized improving the drinkability (i.e. taste, bitterness), which is one of applicants results of beverage components, by using buffers. As stated in the previous Office Action, Kuznicki et al. are also relied on to teach a beverage comprising catechins, electrolytes and carbohydrates to provide an improved drinkable beverage which also has improved hydration features. Kuznicki et al. teach the claimed amount of the potassium ions, which provide cellular hydration, but would also, have resulted in improving the drinkability, as a result of acting as a buffer. The definition of a buffer is also cited as further evidence that buffer lessen the adverse effect of, or to protect (See definition 10 under *Chemistry*). Therefore, absent any clear and convincing evidence to the contrary regarding applicant claimed ranges of the sodium and potassium ions, applicants arguments are not persuasive, since the combination of the prior art teaches the claimed amount of sodium and potassium ions as well as using these ions as buffers for improving the drinkability of a beverage comprising catechins, and any additional advantage derivable through the combination would thus have been obvious and inherent.

9. On page 8 of the response, applicants assert that the metes and bound of claim 1 would be clear to those of ordinary skill in the art as to the wt. basis for the components of non-polymer catechins, sweetener, sodium ions and potassium ions. Applicants' arguments have been considered but are not deemed persuasive.

Claim 1 recites the percentages of non-polymer catechins, sweetener, sodium ion, potassium ions. The instant claim is unclear as to whether these percentages are per the total of the green tea extract or the total of the packaged beverage. For instance, claim 1 recites "a packaged beverage, comprising green tea extract, comprising the following ingredients (A) to (E)." Although the cited lines in the specification indicate that the packaged beverage comprises the components at the claimed weight percentage, limitations from the specification cannot be read into the claims. In this case, the limitation "comprising green tea extract, comprising the following ingredients (A) to (B) is still makes the claim language indefinite as to whether the weight percentages relate to the green tea extract or the total beverage. The claim language "green tea extract comprising the following ingredients (A) to (E) does not make clear the claim clear as to whether these components are within the green tea extract or the beverage itself.

10. Applicants' argument with respect to the rejection of claims 3 and 5 under 35 U.S.C. 112, second paragraph are persuasive and as such, the rejection has been withdrawn.

11. As a result of the filing of the terminal disclaimer, as discussed above, the double patenting rejections of claims 1, 3-5 and 7-8 over claims 1 and 3-10 of copending Application No. 10/583558 in view of Ohishi et al. (US 20030077374); claims 1, 3-5 and 7-8 over claims1-4,8-9,11-14,18,21,25-29 of copending Application No. 11/258892 in view of Ohishi et al. (US 20030077374); claims 1, 2-6 and 8 over claims 1-2 and 6-11 of copending Application No. 10/583556 in view of Ohishi et al. have been withdrawn.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./
Examiner, Art Unit 1794

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794